

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0355P

Withholding Tax

For the month of December 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a monthly withholding tax return for the period December 2004. The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer says (1) the liability qualifies for the Tax Amnesty program, (2) the taxpayer has a good payment record, and (3) the taxpayer was too busy to complete the return.

With regard to the Tax Amnesty program, only liabilities that end before July 1, 2004, qualify for Tax Amnesty. As this liability period ended after July 1, 2004, this liability does not qualify for Tax Amnesty.

With regard to the compliance record, the taxpayer has had a couple of errors in the past few years. The Department does not feel the taxpayer's compliance record would be a factor in the abatement of penalty.

The taxpayer states he was too busy with work during the holiday season to complete the return on time. This is a situation that would be inattention and inattention is negligence.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.